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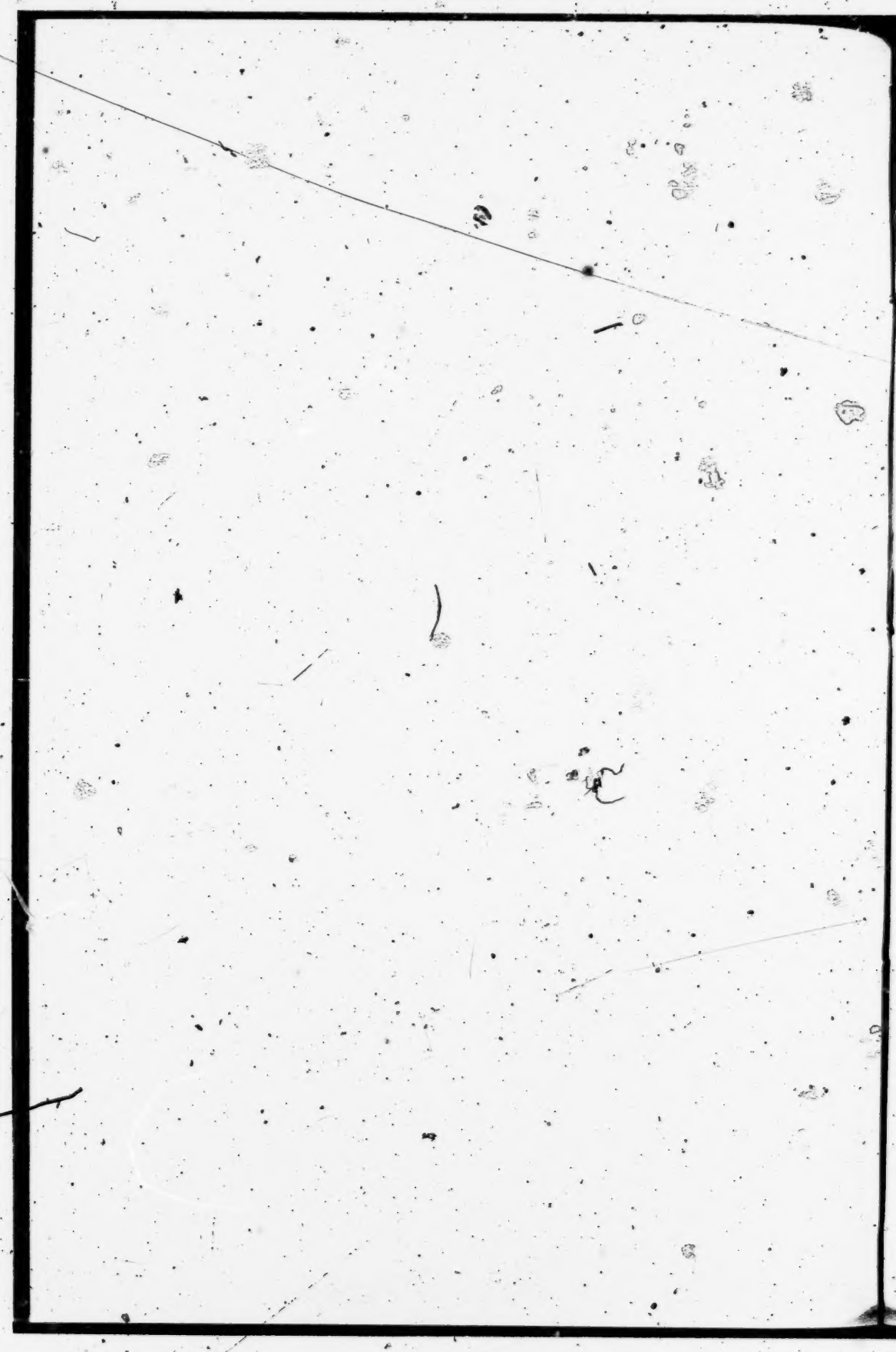

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 112

THE FEDERAL LAND BANK OF COLUMBIA, S. C., PETITIONER,

vs.

MRS. WILL GAINES, RESPONDENT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Supreme Court of the United States:

Respondent respectfully submits to this Honorable Court the following brief in opposition to the petition for a writ of certiorari:

Statement of the Case.

This controversy arises out of business transacted under the provisions of the Federal Farm Loan Act (U. S. Code, Title 12, Chapter 7, Sections 641, *et seq.*) and the parties are in accord that the case is controlled by the provisions of the act.

Brushing all cobwebs aside, the facts briefly are that respondent applied to petitioner through the Columbus National Farm Loan Association for a loan in accordance with the provisions of the Federal Farm Loan Act. As a part of the transaction in connection with obtaining and closing the loan, respondent executed a note and mortgage to evidence and secure the loan, on receipt of which petitioner forwarded its check payable jointly to the secretary-treasurer of the Columbus Farm Loan Association and respondent. This check was delivered to the secretary-treasurer of said association on November 18, 1930 (Record page 4), and was deposited by said secretary in the association's depository to the credit of said association. The proceeds of said check were in due course paid to the said depository and almost simultaneously the depository closed its doors (Record page 17). No part of said funds except $54.23 have ever been disbursed to respondent and the closed loan form of petitioner has never been completely filled out or executed (Record page 18).

From the agreed facts the question arises as to whether or not, on the note and mortgage which she executed, respondent is liable for an amount in excess of the $54.23 which was disbursed in payment of respondent's taxes.

Reasons for the Disallowance of Writ.

It is submitted that the petition for the writ of certiorari should be refused for the following among other reasons:

1. The provisions of the Federal Farm Loan Act applicable to this controversy were correctly construed by the Supreme Court of North Carolina in the opinion handed down in this case (Record pages 26 and 27, *Federal Land Bank of Columbia* v. *Mrs. Will Gaines*, 204 N. C. 278, 167 S. E. 856).

2. The funds for closing the loan applied for by respondent were in process of transmission and were exactly where the act of Congress provided they should be, that is to say in the custody of the Columbus National Farm Loan Association where they are arrested by reason of the insolvency of the duly designated depository of said association, and by reason thereof did not reach respondent except as to the sum of $54.23, and respondent's liability should be limited to the amount received.

ARGUMENT.

The petition, on pages 6 and 7, refers to Sections 714 and 761 of U. S. Code, Title 12, and emphasizes that the duty of a secretary-treasurer of a national farm loan association is "to act as custodian of its funds and to deposit the same in such bank as the board of directors may designate, *to pay over to borrowers all sums received for their account from the Federal land bank upon first mortgage as in this act prescribed, etc.*" This provision must be construed in connection with the rest of the act and respondent thinks that Sections 720 and 772 of the Federal Farm Loan Act, properly construed with the sections quoted are not in accord with the contention of petitioner.

Section 720 of the Federal Farm Loan Act is as follows:

> "Upon receipt of its Charter said National Farm Loan Association shall be authorized and empowered to receive from the Federal Land Bank in the district *sums to be loaned to its members* under the terms and conditions of this act." (Italics ours.)

Section 772 of the Federal Farm Loan Act is as follows:

> "Funds transmitted to National Farm Loan Associations by Federal Land Banks *to be loaned to its members* shall be in *current funds* or farm loan bonds at the option of the borrower." (Italics ours.)

To attempt to construe legislative intent by drawing distinctions between the language emphasized by petitioner and the language which we have written in italics would be futile. The Act of Congress created the Federal Land Banks and the National Farm Loan Associations as separate entities, prescribing the duties of each. The act requires applicants for loans to deal with Federal Land Banks through National Farm Loan Associations. In enacting the Federal Farm Loan Act, and its amendatory acts, Congress sought to aid land owners in obtaining loans and all applications for loans must be made through a national farm loan association where one exists, and no loan can be made by a Federal land bank directly to a borrower. Congress requires both the Federal land banks and the borrower to utilize the services of a national farm loan association and the holding of the Supreme Court of

North Carolina that a national farm loan association is an "intermediary" and as such is a public agent, would seem to be correct as was held in *Bjorkstam* v. *Federal Land Bank of Spokane*, 136 Wash. 446, 244 Pac. 981, and in *Federal Land Bank of Columbia* v. *Shingler et al.*, 174 Ga. 352, 162 S. E. 815.

On pages 7 and 8 of the petition it is argued that the North Carolina Court failed to apply a general rule of law there stated. The respondent does not think this rule of law applicable for the reason that the course of dealing being here discussed was prescribed by the Federal Farm Loan Act and there was no agreement between the two obligors that the consideration for their undertaking should be paid to one of said obligors. In fact the course of action of the two obligors was prescribed by the Federal Farm Loan Act and they were bound by the provisions of the act and could only act in accordance therewith.

It must be borne in mind that the payment of the check was to the intermediary association and not to the borrower. The circumstances under which the respondent authorized the endorsement of the check for her did not constitute payment of a consideration to her. Her endorsement, while necessary, was a mere formality, as the funds under the terms of the act were to be collected by and disbursed by the association and this fact was emphasized to respondent by the secretary-treasurer of the association when he requested authority to endorse for her.

There are some features of the instant case similar to the case of *McFadden* v. *Bland*, 147 S. C. 27, 144

S. E. 592, and *Federal Land Bank of Omaha* v. *Omaha National Bank of Omaha*, 118 Neb. 489, 225 N. W. 471. In the South Carolina case funds being transmitted to close the loan were misappropriated by O'Bryan, the attorney who examined the title and by reason of said misappropriation did not reach the borrower. The court held that the borrower was not liable. In the Nebraska case the funds were embezzled by the secretary-treasurer of the national farm loan association after they had reached the designated depository, but before they reached the borrower. The action was by the plaintiff Federal Land Bank against its depository to recover the amount charged against the account of the plaintiff on checks issued by it on said depository where the endorsement of one of the joint payees had been forged. It does not appear in the case that the plaintiff had undertaken to collect from the borrower or borrowers whose endorsement had been forged, but it is a reasonable argument that if the plaintiff could have collected from borrower there would have been no necessity for suing its depository bank. The respondent does not believe that the Federal Land Bank of Omaha could recover against the borrower whose endorsement had been forged, even though such borrower executed the note and mortgage, where the borrower had not received the funds, and by analogy it would follow that the Federal Land Bank of Columbia should not recover from respondent in the instant case where respondent has not received the funds either actually or constructively.

In the South Carolina case cited the funds did not reach the borrower by reason of the misappropriation

of O'Bryan, the attorney. In the Nebraska case cited the funds did not reach the borrower by reason of the embezzlement of the secretary-treasurer of the national farm loan association. In the instant case there is no embezzlement or misappropriation, but the funds did not reach the borrower by reason of the insolvency of the depository. The respondent respectfully submits that under such facts a borrower who has not received the funds should not be liable and that a proper construction of the Federal Farm Loan Act fixes no liability on an applicant for a loan under the facts existing here.

Section 772 of the Federal Farm Loan Act says:

> "Funds transmitted to Farm Loan Associations by Federal Land Banks to be loaned to its members shall be in current funds, or farm loan bonds, at the option of the borrower."

It does not appear that Mrs. Gaines elected to exercise her option or that the Federal Land Bank of Columbia undertook to transmit farm loan bonds to close the instant loan and it must be taken that the parties intended that the funds to be transmitted would be in current funds. Mr. Lewis evidently did not think that the check met requirements because he told respondent that the proceeds of the check had to be collected and it would be several days before he would have the proceeds for disbursement; that the funds derived from said check would not be available for distribution until such funds were received in Columbus. It cannot be doubted that Mr. Lewis expected to disburse the funds to Mrs. Gaines and that he would

have done so but for the insolvency of the duly designated depository of the Columbus National Farm Loan Association. It cannot be reasonably inferred from the facts that respondent intended that Mr. Lewis should receive the funds for her. That is exactly what she did not intend and by every reasonable inference her intention was to get the funds as soon as they were available to her. The insolvency of the depository made it impossible for the local association to loan to respondent the funds which it had received from petitioner as was contemplated by a proper construction of the provisions of the Federal Farm Loan Act.

For the result to be in accordance with the contention of petitioner the respondent will undoubtedly lose her small farm of 27 acres, although she has not received the money for which her note and mortgage were executed. It cannot be believed that Congress intended that land owners would lose their land by reason of the inability of national farm loan associations to complete the closing of a loan under the facts agreed in this case.

On page 4 of the petition it is said that the questions raised in the instant case have never been submitted or passed upon by the Supreme Court of the United States and that the ruling of the Supreme Court of North Carolina, with respect to the issue of law in this case, is contrary to the decision of the highest courts of States other than North Carolina that have passed upon the question. No cases are cited decisive of the question involved here. It is elementary that the burden of proof is on the petitioner to show error.

Summary and Conclusion.

1. The funds in question were transmitted by the Federal Land Bank of Columbia to the Columbus National Farm Loan Association to be loaned to respondent and delivery of the funds to said association was not delivery to respondent.

2. The respondent should not be liable for the payment of the funds until actually received by her.

3. The decision of the Supreme Court of North Carolina correctly construes the provisions of the Federal Farm Loan Act.

4. The burden of showing error is on the petitioner.

It is, therefore, submitted that the petition should be denied by this Honorable Court.

Respectfully submitted,

M. R. McCown,
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Attorney for Respondent.